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International Court of Justice

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OFFICIAL TRANSCRIPT OF THE INTERNATIONAL MILITARY TRIBUNAL, sitting at Nurnberg, Germany, on 17 November 1945, 1000-1100.

THE PRESIDENT: The Tribunal would like to know whether the chief prosecutors wish to make a statement with reference to the Defendant Bormann.

SIR DAVID FYFE: May it please the Tribunal, as the Tribunal are aware, the Defendant Bormann was included in the indictment, which was filed before the Tribunal. There has been no change in the position with regard to the Defendant Bormann; nor has any further information come to the notice of the chief prosecutors. I think that the Tribunal are aware of the state of our information when the indictment was filed, but it might be well, if the Tribunal approved, if I explain what was the state of our information at the time of the filing of the indictment, which is the state of our information today.

There is evidence that Hitler and Bormann were together with a number of Nazi officials in the Chancellery in Berlin on the 30th of April, 1945, and were at one stage on that day together in Hitler's underground air raid shelter in the Chancellery gardens.

On the 1st of May, Bormann and other Germans tried to break out of the Chancellery in a tank. They got as far as the river Spree and tried to cross a bridge over it. A hand grenade was thrown into the tank by Russian soldiers. Three members of the party who were with Bormann in this tank have been interrogated. Two think that Bormann was killed, and the third that he was wounded. The position is, therefore, that the prosecution cannot say that the matter is beyond a probability that Bormann is dead. There is still the clear possibility that he is alive.

In these circumstances I should submit that he comes within the exact words of Article 12 of the Charter:

"The Tribunal shall have the right to take proceedings against a person charged with crimes set out in Article 6 of this Charter in his absence, if he has not been found."

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The other words it is not necessary to crave their aid in these circumstances. The Tribunal laid down in its rules of procedure in Rule 2 (b) the procedure applicable to this situation:

"Any individual defendant not in custody shall be informed of the indictment against him and of his rights to receive the documents specified in the sub-paragraph (a) above by notice in such form and manner as the Tribunal may prescribe."

The Tribunal prescribed that notice to the Defendant Bormann should be given in the following manner: The notice should be read over the Radio once a week for four weeks. The first reading to be during the week of October 22nd. It should also be published in four separate issues of the newspaper published in the home city of Martin Bormann. It should also be published in four separate issues of a newspaper circulated in the home city of Martin Bormann.

The broadcast was given in the weeks after the 22 of October, as ordered, over Radio Hamburg and Radio Langenberg, that is, Cologne. The Defendant Bormann's last place of residence was in Berlin. The notice was, therefore, published in four Berlin papers: Taegliche Rundschau, Berliner Zeitung, Der Berliner, and the Allgemeine Zeitung for the four weeks which the Tribunal had ordered.

In my respectful submission, the Charter and rules of procedure have been complied with. The Tribunal, therefore, has the right to take proceedings in absentia under Article 12. It is, of course, a matter for the Tribunal to decide whether it will exercise that right.

The chief prosecutors submit, however, that there is no charge in the position since they indicted Bormann and that unless the Tribunal has any different view, this is a proper case for trial in absentia.

I am authorized to make this statement not only on behalf of the British delegation, but on behalf of the United States and the French Republic. I consulted my friend and colleague, Colonel Pokrovsky

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yesterday and he had to take instructions on the matter and I notice he is here today. I haven't had the opportunity of speaking to him this morning and no doubt he will be able to tell the Tribunal anything, if he so desires.

I hope that explains the basis of the matter to the Tribunal. If there are any other facts, I should be only too happy to answer any point.

THE PRESIDENT: It is suggested to me that you should file with the General Secretary proof of the publication to which you have referred.

SIR DAVID FYFE: With proof of the publication, if it please My Lord, that will be done.

THE PRESIDENT: Thank you, Sir David. I will ask the chief prosecutor for the Soviet Union if he wishes to address the Tribunal.

COLONEL POKROVSKY: I thank the Tribunal for its wish to hear the opinion of the Soviet delegation. I shall use this privilege to express myself in order to inform you in regard to the position of the Soviet delegation, which coincides with the position of my colleagues, so far as that matter is concerned. In regard to Bormann, I consider that the Tribunal has full opportunity under the Article 12 of the Charter to accept all the material relative to Bormann's case and to begin proceedings in his absence.

THE PRESIDENT: The Tribunal will adjourn for a short time and hopes it will be able to give its decision shortly.

(Whereupon a short recess was taken).

THE PRESIDENT: The Tribunal has decided that, in pursuance of Article 12 of the Charter, it will try the defendant Bormann in his absence, and it announces that counsel for the defendant Bormann will be appointed to defend him.

The Tribunal will now adjourn.

(Whereupon, the Tribunal, at 1157, adjourned).

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INTERNATIONAL MILITARY TRIBUNAL
Sitting at Nurnberg, Germany, on 15 November 1945,
In session 1415 hours

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THE PRESIDENT: I understand that there are some counsel for the defendants who are present here today, who were not here yesterday and who may not understand the use of the earphones and dials. Therefore, I will explain to them that Number 1 on the dial will enable them to hear the evidence in the language in which it is given. Number 2 will be in English, Number 3 in Russian, Number 4 in French and Number 5 in German.

I will now read the judgment of the Tribunal in the matter of the application of counsel for Gustav Krupp von Bohlen, for postponement of the proceedings against the defendant.

Counsel for Gustav Krupp von Bohlen has applied to the Tribunal for postponement of the proceedings against this defendant on the ground that his physical and mental condition are such that he is incapable of understanding the proceedings against him and of presenting any defense that he may have.

On November 5, the Tribunal appointed a medical commission composed of the following physicians:

R. E. Tunbridge, Brigadier, O.B.E., M.D. M.Sc., F.R.C.P., Consulting Physician, British Army of the Rhine.

Rene Piedelievre, M.D. Professor a la Faculte de Medicine de Paris; Expert pres les Tribuneaux.

Nicholas Kurshakov, M.D., Professor of Medicine, Medical Institute of Moscow; Chief Internist, Commissariat of Public Health, U.S.S.R.

Eugene Sepp, M.D. Emeritus Professor of Neurology, Medical Institute of Moscow; Member, Academy of Sciences, U.S.S.R.

Eugene Krasnushkin, M.D. Professor of Psychiatry, Medical Institute of Moscow.

Bertram Schaffner, Major, Medical Corps, Neuropsychiatrist, Army of the United States.

The Commission has reported to the Tribunal that it is

unanimously of the opinion that Krupp von Bohlen suffers from senile softening of the brain; that his mental condition is such that he is incapable of understanding court procedure and of understanding or cooperating in interrogations; that his physical state is such that he cannot be moved without endangering his life; and that his condition is unlikely to improve but rather will deteriorate further.

The Tribunal accepts the findings of the medical commission, to which exception is taken neither by the Prosecution nor by the Defense.

Article 12 of the Charter authorizes the trial of a defendant in absentia if found by the Tribunal to be "necessary, in the interests of justice." It is contended on behalf of the Chief Prosecutors that in the interest of justice, Krupp von Bohlen should be tried in absentia, despite his physical and mental condition.

It is the decision of the Tribunal that upon the facts presented the interests of justice do not require that Krupp von Bohlen be tried in absentia. The Charter of the Tribunal envisages a fair trial, in which the Chief Prosecutors may present the evidence in support of an indictment and the defendants may present such defense as they may believe themselves to have. Where nature rather than flight or contumacy has rendered such a trial impossible, it is not in accordance with justice that the case should proceed in the absence of a defendant.

For the foregoing reasons, the Tribunal Orders that:

1. The application for postponement of the proceeding against Gustav Krupp von Bohlen is granted.
2. The charges in the indictment against Gustav Krupp von Bohlen shall be retained upon the docket of the Tribunal for trial hereafter, if the physical and mental condition of the Defendant should permit.

Further questions raised by the Chief Prosecutors, including the questions of adding another name to the Indictment will be considered later.

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The Tribunal will now hear the application on behalf of the defendant Streicher.

Will the counsel state his name?

DEFENSE COUNSEL: (For Defendant Streicher) High Tribunal: As defense counsel of the defendant Julius Streicher, I allowed myself, a little while ago, to request a postponement of the main trial, since the time at my disposal for the preparation, in view of the importance of the matter and of this case, did not appear sufficient.

This morning the Presiding Judge of the Court explained in what way the trial would develop and it could be seen, without further ado from that, that the defense will have adequate time, after the opening of the trial, to prepare its defense. Any objections I may have had have been obviated by that fact and for that reason I herewith withdraw my motion.

High Tribunal, on this occasion I would like to make a suggestion which also concerns the defense of the defendant Streicher.

Because of the special nature of this case and because of the difficulties in the defense's conduct of this case, I should like to make this motion; that a psychiatric examination of the defendant Streicher should take place. The defense counsel, in order to have an opinion, must have all the evidence that appears necessary to him regarding the nature, personality, and motives of the defendant he is defending, in order to be able to form his opinion, but the same is true of the Court.

For my own safety I consider it advisable that such an investigation be requested by the Court.

I lay special emphasis on the fact that this is not an objection, it is not a motion, it is a proposal, a suggestion. I need that for my own protection because my client does not wish such a psychiatric examination to take place, because he is of the opinion that he is spiritually completely normal. I cannot myself, determine that. That is the business of a psychiatric expert.

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I therefore, ask you, High Tribunal, to reflect on this suggestion and, if my suggestion strikes you as necessary and advisable, I ask you to appoint an expert and to commission him to conduct this investigation.

That is what I wish to say in preparation for the main trial.

THE PRESIDENT: One moment. It appears to the Tribunal that such suggestions, as you have now made, ought to be in the form of a formal motion or application and that it ought to be in writing and that, if, as you say, the defendant Streicher does not wish it or is unwilling that such an examination should be made, then your application ought to state, in writing, that the defendant Streicher refuses to sign the application.

If you wish to make such a motion you are at liberty to make it, in writing.

DEFENSE COUNSEL: (For Defendant Streicher) I should like to be allowed to answer, in brief. Precisely because the defendant refuses, that I as his defense counsel, make such a request, I thought it advisable to ask the High Court verbally, and in the open, that they be informed of this fact, because I am obliged, because of the attitude of my client, from offering such a suggestion in writing. I am not able to request this in writing, and am therefore, obliged to appear here in public, and to cover myself, also, in that regard.

THE PRESIDENT: But you understand from what I say to you, that if you wish to make this suggestion, you must make the motion in writing and you can, in that writing, state that the defendant Streicher is not prepared to sign the application.

DEFENSE COUNSEL: (For Defendant Streicher) May I say something more?

I thank you, Mr. President, for your statement and I shall not fail to act, as you suggest.

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THE PRESIDENT: Do the Chief Prosecutors wish to make any statement?

AMERICAN PROSECUTION: May it please the Court:

The position of the counsel for defendant Streicher emphasizes a suggestion made by the Prosecutors this morning, namely, that all motions and all requests from counsel be reduced to writing, prior to submission to the Court and the suggestions, in writing, were filed with the General Secretary since the meeting this morning.

While I am on my feet, if it may please the Court, may I make a brief statement in connection with the efforts of the Prosecutors to furnish to the defense counsel evidence and documents in which they may be interested, if that meets with the approval of the Court.

THE PRESIDENT: Yes.

AMERICAN PROSECUTION: With reference to the counsel for defendant Streicher's second point, in his motion, namely that the prosecutors be required to furnish certain documents, they are being furnished, and will be furnished in the future.

Secondly, with reference to the film on concentration camps, which he requests be shown to defense counsel in advance of the time of presenting the film, this request will also be complied with by the Prosecutors.

Also, for the information of defense counsel, there has been established in Room 54, in this Courthouse, what is known as the Defendant's Information Center, operated jointly by the four Chief Prosecutors. In that room there has been deposited a list of documents, upon which the Prosecution relies. Secondly, if further documents are relied upon by the Prosecutors, and before they are introduced into evidence or offered to the Court, lists will be furnished to defense counsel and also, they will have the opportunity to examine copies of those documents in their own language.

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I wanted to make that statement for the benefit of counsel.

May I also suggest that most all of defense counsel have availed themselves of that privilege and those who had not, have been notified and they are now, as of this date, all of them, making use of the facilities provided, which includes rooms for conferences, typewriters, when necessary, and other assistance.

I wanted to make that statement for the information of the defense counsel.

THE PRESIDENT: I understand that the Russian Chief Prosecutor wishes to address the Court.

RUSSIAN PROSECUTOR: In connection with this evidence which was presented to this Tribunal a little while ago by the counsel representing defendant Streicher, I believe it necessary to present that during the last presentation which was made by the Soviet Union Delegation against defendant Streicher, that it was said in the indictment that he had been accused especially of inciting of and persecution of Jews, as it is mentioned in Counts 1 and 4 of the indictment.

He mentioned in the interrogation that he was talking from the standpoint of Zionism. This declaration or, to be more exact, this testimony, immediately produced or caused certain doubts as to the sanity of the defendant. It is not the first time that we encounter the attempt to elude, that is, so far as sanity is concerned, by the people who are being tried now; in particular, I mean the defendant Hess. So far as Hess is concerned --

PRESIDENT: One moment. We are not hearing any application with reference to Streicher's sanity now, nor any application with reference to Hess. We have simply informed counsel for Streicher that if he wishes to make an application in

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respect of his defendant's sanity or mental condition, he must make that application in writing. If he does make such an application in writing you will have full opportunity of opposing the application.

RUSSIAN PROSECUTOR: What I have in mind is not giving the conclusion to the prosecution, but what I want to inform the court of is a fact which may cause much complication if it is not immediately dealt with. Inasmuch as the Court has a number of competent medical personnel, it seems to me as though it would be highly reasonable, on the Court's initiative, to ask the specialists to examine the defendant Streicher, and to come to a certain definite conclusion as to whether he is wholly sane or insane.

If we shall not do it now then such a necessity may arise during this trial. If we do it now then we may prevent the possibility of long delay of the trial. But if the question of the sanity of Streicher will be discussed after the trial starts, then we may encounter the factor which will put brakes on our work.

If the Court will deem correct my suggestion that this should be done now, then we shall still have sufficient time to have the commission, composed of the specialists, tell us before the trial begins as to his sanity.

PRESIDENT: One moment. If i rightly understand what the chief Soviet prosecutor says, it is this: That if any question of the sanity of the defendant Streicher arises it will be convenient that he should be examined now at once whilst the medical officers of the Soviet Union are in Nurnberg. If that is so, then it is open. If you think it is more convenient that Streicher should be examined by doctors at the present moment on account of the presence of the distinguished

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doctors from the Soviet Union being in Nurnberg, then you are at liberty to make a written motion to that effect to the Tribunal at any time.

Do any of the other chief prosecutors wish to address the Tribunal?

(No response)

Then the Tribunal will deal with the application of defendant Streicher as follows:

His application for postponement, which is numbered 1 on his written application, has been withdrawn. His other two applications, numbered 2 and 3, which are agreed to by the chief prosecutors, are granted.

The Tribunal will now adjourn.

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INTERNATIONAL MILITARY TRIBUNAL
Sitting at Nurnberg, Germany, on 17 November 1945,
In session 1500 hours

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THE PRESIDENT: The motion to amend the indictment by adding the name of Alfried Krupp has been considered by the Tribunal in all its aspects and the application is rejected.

The Tribunal will now adjourn.

(Whereupon at 1505 the Tribunal adjourned.)

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INTERNATIONAL MILITARY TRIBUNAL
Sitting at Nurnberg, Germany, on 15 November 1945,
In session 1015 hours.

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THE PRESIDENT: The Tribunal has invited the defense counsel to be present here today as it desires that they shall thoroughly understand the course which the Tribunal proposes the proceedings at trial should take.

The Tribunal is aware that the procedure provided for by the Charter is in some respects different from the procedure to which defense counsel are accustomed. They therefore desire that defense counsel should under no misapprehension as to the course which must be followed.

Article 24 of the Charter provides for the reading of the Indictment in court, but in view of its length, and the fact that its contents are now probably well known, it may be that defense counsel will not think it necessary that it should be read in full.

The opening of cases for the prosecution will necessarily take a long time, and during that time defense counsel will have an opportunity to complete their preparations for defense.

When witnesses for the prosecution are called it must be understood that it is the function of counsel for the defense to cross-examine the witnesses, and that it is not the intention of the Tribunal to cross-examine the witnesses themselves.

The Tribunal will not call upon the defense counsel to state what evidence they wish to submit until the case for the prosecution has been closed.

As defense counsel already know, the General Secretary of the Tribunal makes every effort to obtain such evidence--both witnesses and documents--as the defense wish to adduce and the Tribunal approves.

The General Secretary is providing, and will provide, lodging, food, and transportation for defense counsel and witnesses while in Nurnberg. And though the living conditions provided may not be all that can be desired, defense counsel will understand that there are great difficulties in the present circumstances and efforts will be made to meet any reasonable request.

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Defense counsel have been provided with a document room and an information center where documents translated into Germ n are available for the defense, subject to the necessary security regulations. It is important that defense counsel should notify the General Secretary as long as possible--and at least three weeks, in ordinary cases--in advance, of witnesses or documents they require.

The services which defense counsel are performing are important public services in the interests of justice, and they will have the protection of the Tribunal in the performance of their duties.

In order that the trial should proceed with due expedition, it would seem desirable that defense counsel should settle among themselves the order in which they wish to cross-examine the prosecution witnesses and propose to present their defenses, and that they should communicate their wishes in this regard to the General Secretary

I hope that what I have said will be of assistance to defense counsel in the preparation of their defenses. If there are any questions in connection with what I have said which they wish to ask, I will endeavor to answer them.

(No response)

Then, gentlemen, I assume that you have no questions at the present moment which you wish to ask.

DR. THOMA: Mr. President.

PRESIDENT: Will you state your name and for whom you appear here?

DR. THOMA: My name is Dr. Thoma, defense counsel for the defendant Rosenberg.

PRESIDENT: Yes.

DR. THOMA: I should like to ask whether the defense will immediately get copies of the indictment.

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PRESIDENT: Copies of the Indictment? Those have been served upon each defendant. Do I understand that you want further copies for the use of defense counsel?

DR. THOMA: I should like to make my question more precise. I want to ask whether all the statements of the defendants are taken down by the court reporters, and I would like to know whether these are translated into German and then given to the defense counsel as soon as possible.

PRESIDENT: If you mean a transcript of the evidence which is given before the Tribunal, that will be taken down, and if it is given in a language other than German it will be translated into German and copies furnished to defense counsel. If it is in German it will be furnished to them in German.

DR. THOMA: Will we get copies of everything having to do with the testimony of witnesses?

PRESIDENT: Will you repeat that?

DR. THOMA: Will we get all copies regarding testimony of the witnesses?

PRESIDENT: Yes; that is what I meant by a transcript of the evidence given before the Tribunal. That will be a copy, in German, of the evidence of each witness.

DR. THOMA: Thank you, sir.

DR. DIX: My name is Dr. Dix; I am defense counsel for Schacht.

Your Honor, I have the honorable duty, for my colleagues, to thank you for the words you have spoken from the bench. We defense counsel consider ourselves as helpers of the Court towards the achievement of a just judgment. We have confidence in your conduct of the trial.

Your Honor can be convinced that we shall act entirely in the spirit of the duty that I have just stated, knowing that this is a duty which confronts this Court, and

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that in this case a just judgment will be passed.

PRESIDENT: I assume that there are no further questions at the present stage which counsel for the defense wish to ask. They will understand that if at any stage in the future they have inquiries which they wish to make, they should address them to the General Secretary and they will then be considered by the Tribunal.

The Tribunal will now adjourn until 2 o'clock, when the application on behalf of the defendant Streicher will be heard.

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H0002-0018

INTERNATIONAL MILITARY TRIBUNAL
Sitting at Nurnberg, Germany, on 14 November 1945,
In session 1030 hours

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THE PRESIDENT: Is counsel for Gustav Krupp von Bohlen in court?

DEFENSE COUNSEL: Yes.

THE PRESIDENT: Have you a motion to make to the Tribunal?

DEFENSE COUNSEL: Yes.

THE PRESIDENT: Will you make your motion?

DEFENSE COUNSEL: Mr. President, gentlemen: As the defense counsel of Mr. Krupp von Bohlen Halbach, I repeat the request which was already made in writing, to not hold the process against this defendant; at any rate, not to carry out the trial against this defendant. I request this high court to go further than this request, and not to bring Krupp von Bohlen Halbach to trial now or for good.

As to the affidavit of the experts, who were appointed by this court for the investigation of the illness of Krupp von Bohlen Halbach, he is not capable because of serious illness to appear at this trial without danger of life. The affidavit says that an organic disturbance of the brain is existing and that mental destruction makes the defendant incapable of understanding his surroundings and to react normally to his surroundings.

From that, it follows that Mr. Krupp is not capable to inform his defense. Furthermore, the report says that the deterioration of the physical and mental powers, already has lasted since Mr. Krupp was involved in an auto accident on the 4th of December, 1944. He only can speak a few disconnected words, and during the last two months cannot recognize his relatives and friends. Because of these matters, you can offer the statement that Mr. Krupp has no knowledge of the serving of the indictment of the 19th of October. Thus he does not know that he is an accused and why he is accused.

The question now comes up whether in spite of this complete incapability to appear, in spite of his incapability to inform his defense, and because of the indictment and its contents, the question is whether Mr. Krupp can be tried in absentia. The 12th Article of the Statute gives the

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right to the Court to execute the trial against people who are absent, under two conditions: First, if the accused cannot be found; second, if this Court, because of other reasons, in the cause of justice, thinks it is necessary to try him in absentia. The first condition does not exist because he can be found. It must be asked whether the second condition can be applied. That means whether it is necessary, in the interests of justice, to try Krupp.

The Defense has the point of view that justice does not demand a trial against Krupp in absentia, that it is against justice to try Krupp in absentia. I want to quote the following reasons: The decision on this question must come from the terms of justice of Article 12 of this Statute. We have to take into account here that the 12th Article is purely a regulation concerning procedure. Thus it must be inquired whether the trial against an absent Krupp would be a just procedure. A just procedure is only then given if it is, as a whole, and in these particular regulations, is held in such a way that a just judgment is guaranteed. That is a judgement so that the guilty, the accused, will be punished and the innocent, and not found guilty, will be exonerated from guilt and punishment.

Is it possible that a just judgment can be guaranteed if a defendant is tried in absentia, who without his own guilt cannot appear and cannot defend himself, who cannot inform his defense counsel, and who does not even know that and why he is being accused? Already from the regulation concerning the rights of the defendant in the preliminary procedure, and in the main trial, the question must be answered with "No".

The following regulations are applicable here. According to Article 16 (a), the accused shall receive a copy of the indictment before the trial; according to Article 16 (b), the defendant in the preliminary procedure, and in the main trial, has the right to declare his own position against each accusation; according to Article 16 (c), a preliminary procedure against the defendant shall take place; according to Article 16 (d), the defendant shall decide whether he wishes to have somebody else defend him; according to Article 16 (e), the defendant has the right to bring evidence himself and to interrogate each witness in cross-examination.

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All of these rights, the accused, or the defendant Krupp could not make use of.

The same also applies to the special rights, which have been given the defendants for the main trial. According to Article 24, the defendant should declare his position in the main trial, whether he is guilty or not. In my opinion, this is extremely significant for the further course of the trial and for the trial itself. The defendant can only do this himself personally. I do not know whether it is admissable that the defense counsel may make this declaration of being guilty or innocent for the defendant, but even if this were admissable, then the defense counsel would not be able to give this declaration because he had no opportunity to talk to the defendant.

Finally, the accused, who is not present, cannot carry out the right of the last word. That Statute, which has so many and such significant regulations for the right of the defendant, those were decreed in the Statute, makes it recognizable that an execution of these rights, which were given to the accused, by the defendant personally, is an important force of recognition for the finding of a just judgment. A trial against such a defendant, who is not capable to use these rights, without any guilt of his own, such a procedure cannot be recognized as a just procedure in the sense of Article 12.

I want to take a further step, and I want to say that the procedure in absentia against Mr. Krupp, not only from a regulation of the Statute is in contradiction to justice, but also from the generally recognized principles of the law of procedure of civilized states.

So far as I am informed, no right of procedure of a Continental State permits a court procedure against somebody who is absent, mentally deranged, and thus not capable of arguing his case. According to the German law of procedure, in such a case the trial must be postponed. Paragraph 205 of the German Code of Criminal Law forbidding of the trial against a defendant, who is not capable to argue, is a generally recognized principle of procedure.

In the sense of Paragraph 38 (c) of the Statute of the Inter-

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national Court in The Hague, a Court upon which the regards of the whole world are directed and the eyes of the coming generation, then such a Court cannot ignore such a law.

The foreign press, which in the last days and weeks repeatedly concerns itself with the legal terminology of the Statute, says, as a whole, that the formal trial procedure, the customs and regulations of an important trial, as is customary in civilized countries must be complied with. There can be no departure. While they do not talk against a material departure from the ordinary criminal court of law in its principle, because justice and high political consideration demand the establishment of a new international criminal code in order to be able to punish war criminals.

I wish to add another point here, which is significant for the decision in the discussed question. This high court would not be able, as a matter of course, to receive an impression of the personality of Mr. von Krupp, an impression, which in such an extraordinarily significant trial is a means of recognition, which cannot be underestimated for the judgment on the incriminating evidence. If the Statute (the trial in absentia) is principally permitted against defendants who cannot be located, then corresponding laws of procedure of both states, of all states, and even of the German Criminal Law agree to that.

The defendant who cannot be found or the one who has escaped is absolutely different from a defendant who cannot argue his case, because in contrast to the defendant who cannot appear in court, he has the possibility to appear in court and thus to defend himself. If he goes out of the way of this possibility, then he arbitrarily makes himself responsible to the disadvantages and dangers of his absence.

A just procedure in this case would not be there. Voices have been heard in the last days and weeks that public opinion of the world demands to bring a trial against the defendant Krupp under all circumstances, and even in absentia, because Krupp was the owner of the greatest German armament works and also one of the principal war criminals. So far as it concerns this demand of public opinion of the world, and the reasons are

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given that Krupp be one of the principal war criminals, the answer is that so far these accusations are only a thesis of the prosecution, which must be proved in the trial.

The significance is, however, that it is not important whether the public opinion of the world or, perhaps, to use a word which came from the Nazi, "the healthy feeling of the people", or even political consideration may play a part in the decision of this question, but only and solely the question must be decided of Article 12 whether justice demands the trial against Krupp and Bohlen. I do not want to deny that the demands of justice simultaneously is or may be a question of public opinion of the world. However, the demands of public opinion of the world and the demands of justice may be in contradiction to each other.

THE PRESIDENT: Will you repeat the last sentence?

DEFENSE COUNSEL: As far as the case is concerned that appears before us today, a contradiction between the demands of public opinion of the world which demands or which would demand a trial against Krupp in essential and the demands of justice, such a contradiction would exist, and that is because, as I just elaborated, it is against the recognized principles of the law of all States and especially against Article 12.

It would be wrong to have such a procedure against the mentally deranged person who cannot defend himself.

A trial in which it goes all out for the defendants for his honor, to be or not to be, and which means more now, it means whether he belongs to the circle of the war criminals which brought such great misery to humanity and to their own country. I want to discuss these aspects and disadvantages and dangers of the trial. However, I do not want to put them into the foreground. Much more significant are the dangers and disadvantages of such an unusual procedure for material justice, because the procedure against such an unusual procedure for material justice, because the procedure against such a defendant who is not able to argue his case because of the total incapability of an ordinary defense makes it impossible to find a just and correct decision. This cannot be guaranteed by such a procedure. This danger, as far as material justice

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is concerned, in my opinion, must be accepted by the Court, which is of importance in the history of the world, which has never been equaled before, and which Court has put to itself the high and holy task that by punishment of the war criminals the repetition of such a cruel war as the Second World War was, must be prevented that we must keep up the reputation of this Court and open up the gates for the entire people of the earth.

THE PRESIDENT: Mr. Justice Jackson, you will pose the motion.

MR. JUSTICE JACKSON: Appearing in opposition to this motion, I should, perhaps, first file with the Tribunal my commission from President Truman to represent the United States in this proceeding. I will exhibit the original commission and hand a photostat to the Secretary.

I also speak in opposition to this motion on behalf of the Soviet Union and with the concurrence of the French delegation which is present. I fully appreciate the difficulties which have been presented to this Tribunal in a very loyal fashion by the distinguished representative of the German legal profession who has appeared to protect the interests of Krupp, and nothing that I say in apposing this motion is to imply any criticism of counsel for Krupp who is endeavoring to protect the interest of his client, as it is his duty to do, but he has one client whose interests are very clear.

We represent three nations of the earth, one of which has been invaded three times with Krupp armaments, one of which has suffered in this war in the east as no people have ever suffered under the impact of war, and one of which has twice crossed the Atlantic to put at rest controversies insofar as its contribution could do so which was stirred by German militarism. The channel by which this Tribunal is to interpret the Charter in reference to this matter is the interest of justice, and it cannot ignore the interests that are engaged in the prosecution any more than it should ignore the interest of Krupp.

Of course, trial in absentia has great disadvantages. It would not comply with the constitutional standard for citizens of the United States in prosecutions conducted in our country. It presents grave diffi-

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culties to counsel under the circumstances of this case. Yet, in framing the Charter, we had to take into account that all manner of voidances of trial would be in the interests of the defendant, and, therefore, the Charter authorized trial in absentia when, in the interests of justice, leaving this broad generality as the only guide to the Court's discretion.

I do not suggest that counsel have over-stated their difficulties, but the Court should not overlook the fact that of all the defendants at this Bar Krupp is unquestionably in the best position, from the point of view of resources and assistance, to be defended. The sources of evidence are not secret. The great Krupp organization is the source of most of the evidence that we have against him and would be the source of any justification aside from his own testimony. When all has been said that can be said, trial in absentia still remains a difficult and an unsatisfactory method of trial, but the question is whether it is so unsatisfactory that interests of these nations should be devoted in arraigning before your Bar the armament and munitions industry through its most eminent and persistant representative. In a written answer with which I assume the members of the Tribunal are familiar, the United States has set forth the history of the background of the Krupp defendant which indicates the nature of the public interest that pleads for a hearing in this case.

I will not repeat what is contained beyond summarizing that for over one hundred thirty years the Krupp enterprise has flourished by furnishing the German military machine its implements of war. During the interval between the two world wars, the present defendant Krupp von Bohlen was the responsible manager and during that time his son, his eldest son, Alfried was initiated into the business in the expectation that he would carry on this tradition. The activities were not confined to filling orders by the government. The activities included the active participation in the encitement to war; the active breaking up through Germany's withdrawal of a disarmament conference, and the League of Nations; the active political campaigning in support of the Nazi program of aggression in its entirety.

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It was not without profit to the Krupp enterprises, and we have restated the spectacular rise of its profits through aiding to prepare Germany for aggressive war. So outstanding were these services that this enterprise was made an exception to the nationalization policy and was perpetuated by Nazi decrees as a family enterprise in the hands of the eldest son Alfried.

Now it seems to us that in a trial in which we seek to establish the principle juritically as it has been established by treaties, convention, and international custom that the encitement of an aggressive war is a crime, it would be unbelievable that the enterprise which I have outlined to you should be ommitted from consideration.

Three of the prosecuting nations ask the permission of this Tribunal immediately to file an amendment to the indictment which will add the name of Alfried Krupp von Bohlen and Halbach at each point in the indictment after the name of Gustav Krupp von Bohlen, and that the Tribunal make immediate service of the indictment of von Alfried, now reported to be in the hands of the British Army of the Rhine.

I have to face the problem whether this will cause delay. All of the nations at your Bar deplore delay. None deplore it more than I, who have long been prominent in this task, but if the task in which we are engaged is worth doing at all, it is worth doing well; and I do not see how we can justify the placing of our convenience or a response to an uninformed demand for haste ahead of doing this task thoroughly. I know there is impatience to be on with the trial, but I venture to say that very few litigations in the United States involving one plaintiff and one defendant under local transactions in a regularly established court come to trial in eight months after the event, and eight months ago the German Army was in possession of this room and in possession of the evidence that we have now. So we make no apology for the time that has been taken in getting together a case which covers a continent, a decade of time, and the affairs of most of the nations of the earth.

We do not think the addition of Alfried Krupp need delay this trial by the usual allowance of time to the defendant. The work already

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done on behalf of Krupp von Bohlen would no doubt be available to Alfried. The organization Krupp is the source of the document and of most of the evidence on which the defense will depend. If this request of the United States of America, the Soviet Union, and the French Republic is granted, and Alfried Krupp is joing, we would then have no objection to the dismissal, which is the real substance of the motion, as to the elder Krupp, whose condition doubtless precludes his being brought to the trial in person.

THE PRESIDENT: Mr. Justice Jackson, may I draw your attention to Page 5 of the written statement of the United States? At the bottom of Page 5 you say "the prosecutor representing the Soviet Union, the French Republic and the United Kingdom unanimously appose inclusion of Alfried Krupp", and then you go on to say on the fourth line of Page 6, "immediately upon service of the indictment, learning the serious condition of Krupp, the United States again called a meeting of prosecutors and proposed an amendment to include Alfried Krupp. Again the proposal of the United States was defeated by a vote of three to one." Are you now telling the Tribunal that there has been another meeting at which the prosecutors have reversed their two previous decisions?

Your Honor, I understand the French delegation has filed a statement with the Secretary of the Tribunal, which joins in the position of the United States. I have just been called, on behalf of the Soviet Prosecutor, General Rudenko, who is in Moscow, to advise us that the Soviet delegation now joins, and this morning I was authorized to speak in their behalf. Both these delegations desire to reduce, as do we, of course, any possible delay to a minimum.

I may say that the disagreement at the outset over the inclusion of Alfried, was due not to any difference of opinion as to whether this industry should be represented in this trial, but it was not understood that the condition of the elder Krupp was such as would preclude his trial. It was believed that it was.

THE PRESIDENT: Forgive my interrupting you, Mr. Justice Jackson, but the words that I have just read show that the condition of Krupp was apprehended at the time. The words are: "Immediately upon service of the

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indictment, learning the serious condition of Krupp, the United States again called a meeting of Prosecutors, and again the proposal of the United States was defeated by a vote of three to one."

JUSTICE JACKSON: I am referring to the original framing of the indictment, so we are speaking of two different points of time.

THE PRESIDENT: I see.

JUSTICE JACKSON: It was felt that it would be very difficult to manage a trial which included too many defendants, and that inasmuch as Gustav Krupp von Bohlen was in, it was unnecessary to have others. When the indictment was served, the information came to us of his condition, and we called the meeting. It was not then anticipated with certainty that the trial could not proceed. His condition was then, we knew, serious, but the extent of it was not known to us as definitely as it is now; and it was felt by the other three prosecuting nations at that time, that it would not be necessary to make this substitution.

In the light of what has now happened, both the Soviet Union and the French Republic join in the position of the United States.

THE PRESIDENT: Then may I ask you how long you suggest delay should be given, if your motion to the addition of Alfried Krupp were granted?

JUSTICE JACKSON: I hesitate to say what might be reasonable from the point of view of the defendants, but it would seem to me that in the first place, he might be willing to step into his father's place without delay; but in any case that the delay should not exceed the commencement of this trial on the 2nd day of December, which I think is Monday, which would enable him, it seems to me, with the work that has been done, to adequately prepare, and would enable us to serve immediately. If permission is granted, we can immediately make the service; and, of course, they have already had full information of the charges, and access to the documents.

THE PRESIDENT: Is he not entitled under the charter and the rules of procedure to 30 days from the filing of the indictment, for the service of the indictment upon him?

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JUSTICE JACKSON: I think the charter makes no such requirement, and I understand that the rules of the court are in control of the court itself.

THE PRESIDENT: Would suggest that he should be given less time than the other defendants%

JUSTICE JACKSON: I have no hesitation sponsoring that suggestion, for the reason that the work that has already been done presumeably would be available to him; and as I have suggested, of all the defendants, the Krupp family is in the best position to defend, from the point of view of resources, from the point of view of the reach of their organization; and, I am sure you will agree, they are not at all handicapped in the ability of counsel.

THE PRESIDENT: I have one last question to put to you: Can it be in the interest of justice to find a man guilty, who, owing to illness, is unable to make his defense properly?

JUSTICE JACKSON: Assuming the hypothesis that your Honor states, I should have no hesitation in saying that it would not be in the interests of justice to find a man guilty who can not properly be defended. I do not think it follows that the character of charges that we have made in this case against Krupp, Gustav Krupp von Bohlen, cannot be properly tried in absentia. That is an argueable question; but it can hardly be assumed that all of the acts which we charge him with are either documentary, or they were public acts. We are not charging him with the sort of thing that one resorts to private sources. The one serious thing that seems to me, is that he would not be able to take the stand himself in his defense, and I am not altogether sure that he would want to do that, even if he were present.

THE PRESIDENT: But you have stated, have you not,

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and you would agree, that according to the Municipal Law of the United States of America, a man in the physical and mental condition of Krupp could not be tried.

JUSTICE JACKSON: I think that would be true in most of the jurisdictions.

THE PRESIDENT: Thank you.

Mr. Attorney General.

ENGLISH PROSECUTION: May it please you, Mr. President: The matters which I desire to submit to the Tribunal can be shortly stated, and first among them I should say this: There is no kind of difference of principle between myself and my colleagues, representing the other three prosecuting powers, none whatsoever. Our difference is as to method and as to procedure. In the view of the British Government, this trial has been enough delayed, and matters ought now to proceed without further postponement.

Before I say anything in regard to the application which is before the Tribunal, on behalf of Gustav Krupp von Bohlen, may I say just one word about our position in regard to industrialists, generally. Representing, as I do, the British Government, it may be safely assumed by the Tribunal that I am certainly not less naxious than the representatives of any other state that the part played by industrialists in the preparation and conduct of the war should be fully exposed to the Tribunal and to the world. That will be done, and that will be done in the course of this trial, whether Gustav Krupp von Bohlen or Alfried Krupp are parties to the proceedings or not. The defendants who are at present before the Tribunal, are indicted for conspiring not only with each other, but with divers other persons; and if it should be the decision of the Tribunal that Gustav Krupp von Bohlen should be dismissed from the present proceedings, the evidence as to the part which he, his firm,

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his associates, and other industrialists played in the preparation and conduct of the war, would still be given this Tribunal, as forming part of the general conspiracy in which these defendants were involved with divers other persons, not now before the court.

Now, then, in regard to the application which is before the court on behalf of Gustav Krupp von Bohlen, the matter is, as it seems to me, entirely one for the Tribunal; and I would only wish to say this about it: It is an application which, in my submission, must be treated on its own merits. This is a court of justice, not a game in which you can play a substitute, if one member of a team falls sick. If this defendant is unfit to take his trial before this Tribunal, and whether he is fit or unfit as a matter for the Tribunal, he will be none the less unfit because the Tribunal decides not to join some other person, not at present a party to the proceedings.

There is provision under the Charter for trial in absentia. I do not wish to add anything which has been said in regard to that aspect of the matter by my friend, Mr. Justice Jackson, but I ask the Tribunal to deal with the application, made on behalf of Gustav Krupp von Bohlen, quite independently of any considerations as to the joinder of some other person's considerations, which, in my opinion, are relevant to that application. There is, however, before the Tribunal, an independent application to permit the joinder of a new defendant, at this late state. I think I should perhaps say this: that as you, Mr. President, pointed out, at the last meeting of the chief prosecutors, at which this possibility was discussed, not for the first time, the representatives of the Provisional Government of France and of the Soviet Government were, like ourselves, representing the British Government, opposed to the addition of any defendant, involving any delay in the commencement of these

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proceedings. I take no technical point upon that at all. I am content that you should deal with the matter now, as if the chief prosecutors had had a further meeting, and as a committee, in the way that they are required to act under the Charter, had by majority decided to make this application. I mention the matter only to explain the position in which I find myself, as the representative of the British Government, in regard to it. At the last meeting of chief prosecutors, there was agreement with the British view. The representatives of the other two states, as they were quite entitled to do, have since that meeting come to a different conclusion. Well, now, so far as that application is concerned, I would say only this: The case against the existing defendants, whether Gustav Krupp von Bohlen is included amongst them or not, can be fully established without the joinder of any additional person, whoever he might be. The general part played by the industrialists can be established without the joinder of any particular industrialist, whoever he might be. That case will indeed be developed, and will be made clear in the course of this trial. That is not to say that Alfried Krupp should not be brought to justice. There is provision under the Charter for the holding of further trials, and it may be according to the result of the present proceedings, that hereafter other proceedings ought to be taken, possibly against Alfried Krupp, possibly against other industrialists, possibly against other people as well. At present, we are concerned with the existing defendants. For our part, the case against them has been ready for sometime, and it can be shortly and succinctly stated; and in my submission to the Tribunal, the interests of justice demand, and world opinion expects, that these men should be put upon their defense without further delay.

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I respectfully remind the Tribunal of what was said at the opening session in Berlin by General Nikochenko, in these terms:

"The individual defendants in custody will be notified that they must be ready for trial within 30 days after the service of the indictment upon them. Promptly thereafter, the Tribunal shall fix and announce the date of the trial in Nurnberg, to take place not less than 30 days after the service of the indictment; and the defendants shall be advised of such date as soon as it is fixed."

And then these words:

"It must be understood that the Tribunal, which is directed by the Charter to secure an expeditious hearing of the issues raised by the judges, will not permit any delay, either in the preparation of the defense, or of the trial."

Of course, if it happened that Alfried Krupp were prepared to step into his father's shoes in this matter, without any delay in the proceedings, the British prosecutors would welcome that procedure, but if his joinder involves any further delay in the trial of the existing defendants, we are opposed to it.

THE PRESIDENT: May I ask you: Do you agree that according to the Municipal Law of Great Britain, in the same way that I understood, according to the law of the United States of America, a man in the mental and physical condition of Gustav Krupp could not be tried?

ENGLISH PROSECUTION: I do, sir. I take the same view, if I may say so, with respect, as Mr. Justice Jackson took upon the question you addressed to him.

THE PRESIDENT: And in such circumstances, the prosecution against him would not be dismissed, but he would be detained during the pleasure of the sovereign power concerned.

ENGLISH PROSECUTION: Yes, sir.

THE PRESIDENT: That is one question that I wanted to put to you.

Do you then suggest that in the present circumstances, Gustav Krupp ought to be tried in his absence, in view of the medical reports that we have before us?

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ENGLISH PROSECUTION: Well, it is a matter which is entirely in the discretion of the Tribunal, and which I do not wish to press in any way; but as the evidence involving his firm will in any event be laid before the Tribunal, it might be convenient that he should be represented by counsel, and that the Tribunal, in arriving at its decision, should take account, as it necessarily would, of his then condition.

PRESIDENT: Is there any precedent for such a course as that, to hold that he could not be tried and found guilty or not guilty and yet to retain counsel to appear for him before the Tribunal?

BRITISH PROSECUTION: I suggested that he should not be treated as being an existing defendant before the Tribunal and held guilty or not. I was dealing with the subsequent course which the Tribunal might adopt in regard to him if they held him guilty of some or all these offenses.

PRESIDENT: But I thought you agreed that according to American municipal law, a man in his physical condition ought not be tried.

BRITISH PROSECUTION: I am not agreed that according to English municipal law he could not be tried.

PRESIDENT: And that law is based upon the interests of justice?

BRITISH PROSECUTION: Mr. President, I can not dispute that, but our law of course contains no provision at all for trial in absentia. Express provision is made for such trials in the charter constituting this Tribunal provided that the Tribunal consider it in the interests of justice.

PRESIDENT: What exactly is it you are suggesting to us, that he should be tried in absence or that he should not be tried in absence?

BRITISH PROSECUTION: Mr. President, we have suggested that advantage should be taken for the trial in absentia, but as I said at the beginning, it is as it appears to me, entirely a matter for the discretion of the Tribunal, not one in which I wish to press any particular view.

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PRESIDENT: Does the chief prosecutor for the Soviet Union desire to speak on behalf of the Soviet Union?

AMERICAN PROSECUTION: I was authorized to state that they take the same position as the United States. I don't know that in answering their questions I would have always given the answers that they would have given. I understand, for example, that they do try cases in absentia, and I think their position on that would be somewhat different from the position I have given.

PRESIDENT: This question I asked you of course was directed solely to the municipal law of the United States. Does the chief prosecutor of the Soviet Union wish to address the Tribunal?

SOVIET PROSECUTION: No.

PRESIDENT: Then does the chief prosecutor for the French Republic wish to address the Tribunal?

FRENCH PROSECUTION: It would be easy to indicate the position taken today by the French delegation by merely reminding oneself that on numerous occasions the French delegation has tried to bring it about that a second trial should be planned and prepared immediately in order that it might be possible to proceed with it as soon as the first trial were completed. We could in this way have prosecuted the German industrialists without any interruption. This point of view has never been adopted by the other prosecutions. We have agreed or rallied to the point of view of the United States as being the most expedient and that which must completely give satisfaction to French interests. We are anxious that Krupp the son should be tried. There are serious charges against him, and no one could possibly understand that there should be no representative of great German industry as being one of the principal guilty parties in this war. We should have preferred that a second trial should have been made against the industrialists, but since this second trial is not to take place, we consider the presence of Alfred Krupp to be absolutely necessary.

PRESIDENT: Would the chief French prosecutor return to the microphone? What is the position which you take up if the substitution of Alfred Krupp would necessarily lead to delay?

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FRENCH PROSECUTION: I beg your pardon, Mr. President, but I don't believe you have in your hand a second note which I submitted this morning to the court after having received a telephonic communication from Paris.

PRESIDENT: I have in my hand a document of the 13th of November 1945 signed by you, I think.

FRENCH PROSECUTION: That's right. There is a supplementary note which I submitted this morning according to which I simply take the same position as that expressed by Mr. Jackson. I was in fact able to find out between the document of last night and that of this morning the consequences that would be brought about--

PRESIDENT: Perhaps the best course would be to read this document which has now been put before us.

FRENCH PROSECUTION: The second document?

PRESIDENT: Will you read this document?

FRENCH PROSECUTION: "We consider that the trial of Krupp's father is not possible at the present time. The trial of a dying old man absent from the trial is impossible. We are anxious that Krupp's son should be prosecuted for there are very serious charges against him. We had asked up to this point that he should be prosecuted without any delay in the trials, but for reasons of expediency which led us to adopt this point of view, this has ceased to be pressing since the Soviet delegation has come around to the point of view of Mr. Jackson. Consequently we no longer raise any objection, and we likewise have come to this point of view.

PRESIDENT: Does what you say now mean that you wish Alfred Krupp to be substituted notwithstanding the fact that it means delay?

FRENCH: Yes, I agree.

PRESIDENT: Are you suggesting on behalf of France that Alfried Krupp should be tried in his absence--that Gustav should be tried in his absence?

FRENCH PROSECUTION: No, no, not that, no.

RUSSIAN MEMBER OF COURT: What does the French prosecutor and the French Republic offer so far as Gustav Krupp is concerned?

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FRENCH PROSECUTION: On the subject of Krupp the father, we consider because of the state of his health it is not possible to prosecute him; he will not be able to appear before the court. He won't be able to defend himself. He won't be able to state his actions. It is necessary to separate his case or to postpone the trial to a time when he shall be cured, unless before that he appears before the supreme judge. We think also that since we can not obtain a second trial against the industrialists, it is necessary that for Krupp the father, who cannot appear, there should be substituted Krupp the son, against whom serious charges exist.

PRESIDENT: Do you agree or disagree with the attorney general for Great Britain that in the course of the trial whether Gustav Krupp or Alfried Krupp are included as defendants the evidence against the industrialists of Germany must be exposed?

FRENCH PROSECUTION: We have been anxious, Mr. President, that a second trial should be prepared immediately to follow the first trial in which the question of the industrialists would be thoroughly examined. Since this second trial is impossible, we are anxious that one of the representatives of the Krupp firm, who is personally responsible or against whom there are charges shall be called to appear before this trial to defend himself against the charges that we shall bring against the Krupp firm, and in a more general manner also against the industrialists who have been associated with the Krupp firm and who have participated in the conspiracy which is presented in the indictment and supported by the Nazi government and propaganda and supported by Nazi money and finally helped the rearmament of Germany in order that it might continue its aggression.

PRESIDENT: Forgive me. I don't think you have answered the question which I put to you. The question was do you agree with the Attorney General for England that whether or not Gustav Krupp or Alfried Krupp--

FRENCH PROSECUTION: I don't understand.

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PRESIDENT: I will repeat the question. Do you agree with the Attorney General that whether Gustav Krupp or Alfred Krupp are or are not defendants in this trial, the evidence against the German industrialists will necessarily be thoroughly exposed in the course of bringing forward the evidence of the conspiracy charged.

FRENCH PROSECUTION: I agree that it is possible to bring the proof of the conspiracy without this or that member of the Krupp family being brought before the court, but it will be only a fragmentary proof and evidence because there are personal responsibilities which go beyond the responsibility, the general responsibilities, of the authors of the conspiracy, and these personal responsibilities have been particularly indicted by Krupp the son and Krupp the father.

FRENCH MEMBER OF THE COURT: You said just now that it was your opinion that the name of Krupp the son should be substituted for that of Krupp the father? Do you really mean the word "substitute"? Did you use this word intentionally or do you not rather wish to say that it was your opinion that there should be an amendment to the indictment and that we should apply a supplement to the indictment and consider that you can propose to the court that you can substitute one name in the accusation or do you propose to add a supplement?

FRENCH PROSECUTION: I have thought for a long time that it was necessary to propose an amendment. It is still my opinion, but legally, it is prevented to have an amendment to modify this indictment.

PRESIDENT: Does Counsel for the Defendant Gustav Krupp wish to address the Tribunal again?

COUNSEL FOR DEFENSE: Mr. President and Gentlemen, I deduce from the explanation of the prosecutor that the principal objections against our point of view could not be made which would have as an aim that it would not be in accordance with the charges if against the absence of Father Krupp, the trial was to be carried out. If in the exposition of the contrary point of view it is pointed out that the public opinion of the entire world demands the trial against

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the accused, Mr. Krupp, then this is hence the reason in the main that Krupp is not to be regarded as one of the principal war criminals. I already pointed out that this reasoning precedes the final judgment of the court and would mean just that. It is my opinion that this is not the place and the time to discuss this question and want to limit myself to say what I already said before: namely, that the things that were said in this direction were only a thesis of the prosecution which in the course of the trial will be faced with an anthithesis of the defense so that then the high court can make a synthesis of this thesis and antithesis and make a judgment. Only one more point regarding this question: It was also pointed out that thus in the absentia of Mr. Krupp, Senior, the trial could be carried out because the entire evidence regarding the question of guilt has already been presented and was no secret. That does not agree with the facts. So far we have seen only a part of the evidence, that is, those that are contained in this bundle of documents. But may I point out that from the firm of Krupp and the private quarters of the Family Krupp, the entire written material was confiscated and entire carloads were taken away. We did not see any of this material. Thus the defense of Mr. von Krupp is not in a position to make an ordinary defense because of the confiscation of this entire immense material. Only the Defendant Krupp, Senior, would be in a position to recognize and point out documents necessary in his defense (or that he could at least amend them in such a way that they could be given in the form of requisitions for evidence to this high court.) As far as the question of an additional indictment is concerned against the son of Alfried Krupp, then I wish to remind right now that I have no official request for the defense of this defendant. But I submit however that I will be charged with this defense and that is why I say to the court and press, with the permission of the court, to say a few words here as a representative, without the formal permission concerning this question. I do not know whether it is possible, that it is legally possible, to put Mr. Alfried Krupp into the list of the

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principal war criminals now. However, if I was to take into account this legal possibility, then I want to point out the following point of view: As a consequence of the changed situation, this seems to be a rather remarkable change of decorations as Krupp was not our principal war criminal.

Now, then it is said that he should be put into the list of the principal war criminals because his father can not be brought to trial. I find a certain play with the representative of the United States which can not be admitted by the court in my opinion.

I want to make the following other remarks: If an accusation would be made against Alfried Krupp, then I, if I was to receive the mission of his defense definitely, I after my conscience have to make a request in paragraph 2A of the procedure regulations that a period of 30 days would have to be covered between the serving of the defendant and the main trial, that this would have to be kept under all circumstances.

In conclusion, I should like to emphasize so far as I am informed, the factual content regarding Alfried Krupp is basically different from the facts concerning the previous defendant Krupp Senior. In the documents that have been put at our disposal so far and which are bound in one volume, I found no single thing about any complicity or participation of Alfried Krupp in the crime with which Krupp Senior is charged. I should like also to emphasized that Krupp has been discussed and that Alfried Krupp I believe in November 1943 was leader of the Krupp firm, that previously from 1937 to 1943 was essentially director of one department but in this capacity he did not have the slightest influence on the leadership of the firm, nor the slightest influence on the acceptance of orders for war material. For all these reasons, I believe I am justified in expressing the wish that Alfried Krupp should not be introduced into this trial.

PRESIDENT: The Tribunal will adjourn now and announce its decision on this application later. (1230 hours).